

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 v.
7 FAUSTINO ESQUIVEL-VIDAL,
8 Defendant.
9

Case No. 2:14-cr-00172-APG-NJK

**ORDER DENYING MOTION TO
VACATE SENTENCE**

(ECF No. 41)

10 Defendant Faustino Esquivel-Vidal moves to correct his sentence under 28 U.S.C. § 2255.
11 In a three-sentence motion, Esquivel-Vidal contends that the Supreme Court case *Johnson v.*
12 *United States* renders his sentence enhancement under U.S.S.G. § 2L1.2(b)(1)(A)
13 unconstitutional. Because *Johnson* does not apply to Esquivel-Vidal's sentence, I deny his
14 motion.

15 In *Johnson*, the United States Supreme Court struck down as unconstitutional a clause in
16 the Armed Career Criminal Act.¹ This clause, known as the residual clause, enhanced a sentence
17 if a defendant had a prior conviction for a felony that “involves conduct that presents a serious
18 potential risk of physical injury to another.”² The Supreme Court held that this open-ended
19 definition “produces more unpredictability and arbitrariness than the Due Process Clause
20 tolerates,” and held it void.³

21 Some defendants have argued that *Johnson*'s holding should apply to other statutes,
22 including the Sentencing Guidelines. But the Supreme Court rejected that argument recently in
23 *Beckles v. United States*, 137 S. Ct. 886 (2017), holding that *Johnson* does not apply to the
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26 ¹ **Error! Main Document Only.** *Johnson v. United States*, 135 S. Ct. 2551 (2015).

27 ² *Id.* at 2555 (quotation omitted).

28 ³ *Id.* at 2558.

1 Sentencing Guidelines because these guidelines are discretionary. *Johnson* is therefore of no use
2 to Esquivel-Vidal in challenging his sentence.

3 *Johnson* is unhelpful to Esquivel-Vidal for another reason: the specific guideline used to
4 enhance his sentence does not even have a residual clause.⁴ And if there was any question about
5 whether Esquivel-Vidal was properly sentenced, the Ninth Circuit held in *Camacho-Cruz v.*
6 *Holder*, that the same prior conviction he has qualifies as a crime of violence under a nearly-
7 identical enhancement guideline.⁵ Esquivel-Vidal thus has not shown that his sentence is infirm
8 in any way.

9 To appeal this order, Esquivel-Vidal must receive a certificate of appealability from a
10 circuit or district judge.⁶ To obtain this certificate, Esquivel-Vidal “must make a substantial
11 showing of the denial of a constitutional right, a demonstration that . . . includes showing that
12 reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
13 been resolved in a different manner or that the issues presented were adequate to deserve
14 encouragement to proceed further.”⁷ Given the controlling Ninth Circuit authority on the issue, I
15 deny Esquivel-Vidal request for a certificate of appealability.

16 IT IS THEREFORE ORDERED that defendant Esquivel-Vidal’s motion under 28 U.S.C.
17 § 2255 (ECF No. 41) is DENIED.

18 IT IS FURTHER ORDERED that defendant Esquivel-Vidal’s request for a certificate of
19 appealability is DENIED.

20 DATED this 15th day of May, 2017.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

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23 ⁴ See U.S.S.G. § 2L1.2(b)(1)(A).

24 ⁵ *Camacho-Cruz v. Holder*, 621 F.3d 941 (9th Cir. 2010).

25 ⁶ 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b)(1); 9th Cir. R. 22–1(a).

26 ⁷ *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000) (quotation omitted).